

NATURAL RESOURCES BOARD

Minutes

The regular meeting of the Natural Resources Board was held on Wednesday, May 28, 2003, at the Holiday Inn Convention Center, 1501 North Point Drive Stevens Point, Wisconsin. The meeting was called to order at 8:35 a.m. for action on Items 1, and 2. The meeting recessed at 8:59 a.m., and reconvened at 10:40 a.m.

PRESENT: Trygve A. Solberg, Chair
James E. Tiefenthaler, Vice Chair
Gerald W. O'Brien, Secretary
Herbert F. Behnke
Howard D. Poulson
Stephen D. Willett

ABSENT Jonathan P. Ela
Gerald W. O'Brien (left at 12:45 p.m.)

ORDER OF BUSINESS

1. Minutes to be approved.
- 1.A. Full Board Minutes of April 22-23, 2003.

Mr. Willett MOVED, seconded by Mr. Behnke, approval of the Full Board Minutes of April, 2003, as presented. The motion was carried unanimously by those members present. (Mr. Ela was absent)

- 1.B. Agenda for May 27-28, 2003.

Secretary Hassett requested the following changes: Add to Committee of the Whole item 4.C. Adoption of order FH-46-02-revision of Chapter NR 25, pertaining to commercial fishing outlying waters; move Item 7.B. to the beginning of the meeting, Donation from Wisconsin Bear Hunters Association for a gift of \$8,500 for the Conservation Warden Internship Program at the University of Wisconsin Stevens Point; and add to Department Secretary's Matters Item 7.E. Donation from David Leanna, Do-All Trap Company, Neenah, Wisconsin, for a gift of 600 Do-All trap throwers, for training in shotgun shooting events in the Hunter Education Program.

With those changes, Mr. O'Brien MOVED, seconded by Mr. Willett, approval of the Agenda for May 28, 2003, as amended. The motion was carried unanimously by those members present. (Mr. Ela was absent)

2. Ratification of acts of the Department Secretary.
- 2.A. Real estate transactions.

Mr. Tiefenthaler MOVED, seconded by Mr. Behnke, approval of the real estate transactions, as printed.

Mr. Willett commented that the Legislature is concerned about the Board's real estate transactions and he asked Mr. Richard Steffes, Real Estate Director, for an explanation of the Board's real estate transactions that are included in this agenda. Mr. Willett stated that some of these lands are in the real estate transaction listing to complete programs, but the rest of the lands are in boundaries of pre-approved programs and they are all funded. These funds are not coming out of the new budget. The Legislature is proposing that we sell off land and purchase no new land. He wanted to explain that these lands do not fall within the mandate from the Legislature. Mr. Tiefenthaler asked if these Stewardship Funds are on all these real estate transactions today or if they are co-mingled with other funds.

Mr. Steffes responded that they are co-mingled. There are some NRDA's (Natural Resources Damage Assessment). Any source of funds that is available to the Department for land acquisitions are used to the best advantage of the Department. If the Department can get SFR (Sport Fishery Restoration) money from Federal Fish and Wildlife or if they can get paper mill money from a settlement, those funds are then deposited with the Department. Once they are deposited with the Department, the Department then treats that acquisition just like any Stewardship acquisition and the same rules are followed for appraisals and approvals through this Board, the Secretary, and the Governor. The same process and approval is used. This isn't done unless the Board approves it. He then gave an example of a paper mill land acquisition. If the Board doesn't approve land acquisitions, whether it is state dollars or not, it is still an acquisition by the Department and will be handled through the conservation inventory. Mr. Behnke stated that former Secretary Meyer has indicated that it might be illegal for the Department to sell some of the state land that involves federal grants and federal funds. If the Department did indeed sell some lands they would need to be repaid for the sale of these lands. Mr. Behnke requested a clarification of sales from the Department to give the Board some indication of the process. If the Department would need to sell some land Mr. Behnke asked how the Department would determine a priority listing of lands that would be sold. Chairman Solberg responded that in the past the Department and all agencies have been asked to sell property and as he recalled the Department of Natural Resources has lead the way more so than many other agencies for many years. Mr. Steffes responded, there was an executive order in 1994 by Governor Thompson to sell excess lands. This order was with the Department of Transportation, Department of Corrections, and the Department of Natural Resources. At that time, the Department inventory staff looked at the project boundaries and they listed 24 commercial state lands, went through the process, and went to the Board to declare them no longer needed for conservation purposes. The Department did make an attempt to sort out any land that had any federal interest, where there was cost sharing. The Department missed two in this process and paid a price with the Fish and Wildlife Service on those. If this were to happen, the first thing that the Department would do is look at the source of funds. If there were any federal dollars involved, it would be off limits or does need to be paid back to the federal government. If the land purchase would be through the Park Service, for example, it would need to pay back 50 percent to the federal government. There are probably half of the parcels that the State has in conservation inventory that have some federal dollar connections. The reason there is such a large number is because the federal regulations require that those dollars are used for acquisitions or development, the whole project is encumbered. In other words, for example the Northern Highlands State Forest which is a large area of land, any lands owned in 1981, is to be under the umbrella of the Federal Law Contract by any funds used at that time. Fish and Wildlife Service have different rules, so if there is SFR or PR (Pittman-Robertson) it would only be for the parcel involved. They sometimes will approve a sale but it would need to be land away from a stream, for example, or excess land not being used for a project. If this is done, the State would need to buy replacement land, get their approval, or the other situation is to pay them back the 75 percent of the value of the land. This needs to be managed very carefully. If there is a scattered parcel that is not needed for conservation purposes normally the Department holds that land for exchange purposes. If there is a mandate to sell, those would be put on the sell block first. If the target of \$40,000,000 is to be accomplished, Mr. Steffes thought that the Department would need to get into fringes of the project, which could start to have a negative impact on the projects that are being worked on. Results would be smaller parks and smaller wildlife areas with houses next to them. He didn't see how that would work. Mr. Behnke asked what the current status of the request from the Joint Finance Committee is and if this would now go to the Legislature for approval. Mr. Steffes responded, yes, it is a change to the Governor's budget. If the Legislature approves the budget the way it is today, that would become law if the Governor signs off on it. The caucuses can change that or the Department could see changes in the next month. Mr. Tiefenthaler stated that it is his understanding that the Legislature is not talking about this type of property but selling property that is primarily agricultural land, land that could be put back in agriculture. Mr. Steffes responded, obviously they are not talking about forestry land up north, wetlands, but lands that could be either scattered parcels, the way the motion was written, or land that could be diverted back to agriculture. He presented Grand Marsh in Waukesha County and French Creek Wildlife Area in Marquette County as examples and described the management purposes. Mr. Tiefenthaler asked what would be the priorities, what would be available, what wouldn't be

available, and if the Department was ordered to do some land sales. Mr. Steffes responded that the motion states to sell \$40,000,000 in a two-year period, and if that is the law the Department has to implement it. He didn't see how they could accomplish that goal without going after some of these upland areas next to these properties. He didn't see that the Department could get to that amount with scattered parcels alone. Mr. Behnke asked if Mr. Steffes felt there would be many buyers for this land in a two-year period. Mr. Steffes responded that he felt that if there is pressure to sell, he would be concerned to get top dollar because there would be a fire sale. Chairman Solberg responded, if you look at a plate book, you see scattered forties and you see State of Wisconsin on them, he is sure that some of the politicians are looking at this. The problem is that the Department of Natural Resources does not own all those properties that say the State of Wisconsin on them. The Board of Commissioners owns probably a great share of those. When you look at some of this land, it is probably not even the Department of Natural Resources land to sell. In some cases, there are scattered forties that are donated. You get donations that aren't in the boundaries, we end up with them, and they are used for trade purposes. Mr. Behnke responded that the Governor indicated that he would veto this. He further stated that he had hoped that the Governor would follow through with a veto. Mr. Willett asked for clarification on possible land sale transactions with a report to the Board.

The motion was carried unanimously by those members present. (Mr. Ela was absent)

- 3. Operating Committees.
- 3.A. Air, Waste and Water/Enforcement Committee.
- 3.A.1. Minutes.

There were no Committee minutes for April 2003 since all agenda items were taken up during the Full Board Meeting.

- 3.A.2. Adoption of Order AM-11-03 - revision of Chapters NR 400, NR 409, NR 410, NR 415, NR 419, NR 420, NR 422, NR 423, NR 424, NR 431, NR 439, NR 447, NR 448, NR 449, and NR 484, Wis. Adm. Code, pertaining to clarification of compliance language for air management regulations.

Mr. Willett stated that the Committee amended this adoption under section 38 NR 439.09 (introduction) as unchanged and reads as in the green sheet package, with changes to NR 439.09(8), Section 44, being dropped from this proposed rule order.

The Committee recommended and Mr. Willett MOVED, seconded by Mr. Poulson, adoption Order AM-11-03 - revision of Chapters NR 400, NR 409, NR 410, NR 415, NR 419, NR 420, NR 422, NR 423, NR 424, NR 431, NR 439, NR 447, NR 448, NR 449, and NR 484, Wis. Adm. Code, pertaining to clarification of compliance language for air management regulations, as amended. The order was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

- 3.A.3. Adoption of Order DG-13-03 - revision of Chapter NR 809, Wis. Adm. Code, pertaining to safe drinking water.

The Committee recommended and Mr. Willett MOVED, seconded by Mr. Poulson, adoption Order DG-13-03 - revision of Chapter NR 809, Wis. Adm. Code, pertaining to safe drinking water, as presented. The order was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

- 3.A.4. Adoption of Order FH-16-03- revision of Chapter NR 190 and repeal of Chapter NR 192, Wis. Adm. Code, pertaining to lake classification technical assistance grants.

The Committee recommended and Mr. Willett MOVED, seconded by Mr. Poulson, adoption Order FH-16-03 - revision of Chapter NR 190 and repeal of Chapter NR 192, Wis. Adm. Code, pertaining to lake classification technical assistance grants, as presented. The order was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

- 3.A.5. Authorization for hearing on revision of Chapter NR 428, Wis. Adm. Code, pertaining to reduction of NOx emissions.

The Committee recommended and Mr. Willett MOVED, seconded by Mr. Poulson, authorization for hearing on revision of Chapter NR 428, Wis. Adm. Code, pertaining to reduction of NOx emissions. The motion was carried unanimously by those members. (Mr. Ela and Mr. O'Brien were absent)

- 3.A.6. Authorization for hearing on revision of Chapters NR 104, NR 105, NR 106, and NR 210, Wis. Adm. Code, pertaining to ammonia nitrogen water quality standards.

The Committee recommended and Mr. Willett MOVED, seconded by Mr. Poulson, authorization for hearing on revision of Chapters NR 104, NR 105, NR 106, and NR 210, Wis. Adm. Code, pertaining to ammonia nitrogen water quality standards. The motion was carried unanimously by those members. (Mr. Ela and Mr. O'Brien were absent)

- 3.A.7. Authorization for hearing on revision of Chapter NR 118, Wis. Adm. Code, pertaining to standards and criteria for the Lower St. Croix National Scenic Riverway.

After Mr. Willett's presentation of this authorization, **Mr. Tiefenthaler** asked for clarification on the words visually inconspicuous, which are included in this authorization. Mr. Willett stated that he felt this will be defined more in the process, while allowing the public to respond during the hearings. **Chairman Solberg** responded that during the mitigation process there will be areas to choose from, he felt this is where the clarification of visually inconspicuous will be addressed.

The Committee recommended and Mr. Willett MOVED, seconded by Mr. Poulson, authorization for hearing on revision of Chapter NR 118, Wis. Adm. Code, pertaining to standards and criteria for the Lower St. Croix National Scenic Riverway. The motion was carried unanimously by those members. (Mr. Ela and Mr. O'Brien were absent)

- 3.B. Land, Management Recreation and Fisheries/Wildlife Committee.

- 3.B.1. Minutes.

There were no Committee minutes for April 2003 since all agenda items were taken up during the Full Board Meeting.

- 3.B.2. Adoption of Order FH-04-03 - proposed fishing regulation changes resulting from the 2003 Spring Fish and Wildlife Hearings.

Mr. Behnke stated that the Committee offered an amendment on this rule adoption. Mr. Tiefenthaler offered an amendment of having a five year review and the Conservation Congress did request that there be a five year review, a sunset of these rules to be incorporated into these rules when adopted.

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, adoption Order FH-04-03 pertaining to proposed fishing regulation changes resulting from the 2003 Spring Fish and Wildlife Hearings, as amended to include a five year review. The order was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

- 3.B.3. Authorization for hearing on revision of Chapter NR 10, Wis. Adm. Code, pertaining to establishing the 2003 migratory game bird season.

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, authorization for hearing on revision of Chapter NR 10, Wis. Adm. Code, pertaining to establishing the 2003 migratory game bird season. The motion was carried unanimously by those members. (Mr. Ela and Mr. O'Brien were absent)

3.B.4. Baraboo Hills Recreation Area land acquisition - Sauk County. (P-1808)

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 70 acres from The Nature Conservancy for \$169,904 for the Baraboo Hills Recreation Area in Sauk County, as presented. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

3.B.5. Baraboo Hills Recreation Area land acquisition - Sauk County. (P-1809)

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 101.51 acres from The Nature Conservancy for \$243,391 for the Baraboo Hills Recreation Area in Sauk County, as amended to keep the agricultural land in agriculture. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

3.B.6. Baraboo Hills Recreation Area land acquisition and donation - Sauk County. (P-1813)

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 56.7 acres of land from James and Margaret Ring for \$190,000 for the Baraboo Hills Recreation Area in Sauk County, and accept the donation of \$25,000 from the Nature Conservancy toward the purchase, as presented. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

3.B.7. Green Bay West Shores Wildlife Area land acquisition - Brown County.

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 112.64 acres from Loren and Marian Hart for \$640,000 for the Green Bay West Shores Wildlife Area in Brown County, as presented. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

3.B.8. Lower Chippewa River Natural Area land acquisition - Dunn County.

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 190 acres from Cyril Weber for \$257,500 for the Lower Chippewa River State Natural Area in Dunn County, as presented. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

3.B.9. Turtle Flambeau Scenic Waters Area land exchange - Iron County.

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve of the land exchange of 80 acres of state land valued at \$80,000 for 80 acres of county land valued at \$88,00 owned by Iron County in Iron County, for the Turtle Flambeau Scenic Waters Area, value difference of \$8,000 paid by the state to Iron County, as presented. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

3.B.10. Black River State Forest land acquisition - Jackson County.

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 464.63 acres from Plum Creek Timberlands for \$540,000 for the Black River State Forest in Jackson County, as presented. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

3.B.11. Forestry Education and Awareness Center Project establishment and land acquisition - Milwaukee County.

Mr. Behnke stated that there was some concern of the State buying this land from Milwaukee County for \$726,550. The Committee recommended that this be returned to the county requesting that they reduce the price by 50 percent so that Milwaukee County is making a 50 percent contribution. There was no final action on this item by the Committee.

DEFERRED - The Board requested the Department to send this item back to Milwaukee County to request a 50/50 partnership with the State of Wisconsin on the amount of the purchase.

Mr. Tiefenthaler stated that this will essentially benefit students from Milwaukee County. The Department has no bonding, no funding, no money for building a new center, it isn't in the budget. If the Department is going to build, they are going to own, and this is Milwaukee County land, it has been their land, there is no reason for the Board to be using state dollars to buy this whole area for appraised value. Mr. Behnke responded that this is only part of a three step program. First you need to buy the land, then build a building, then find the money to do staffing, about a million dollars a year. This is something that the Board needs to give more consideration to and Milwaukee County should be making a greater contribution. Mr. Willett responded that the whole idea of trying to introduce this great State of Wisconsin and its natural resources to a large segment of society is very important for the State's long term stewardship of this land. He thought it imperative that the Board continue to recognize the importance of this program. He understands and he agrees with the Committee's action, but he didn't want the message to be sent that the Natural Resources Board does not believe that those people who live in the City of Milwaukee not be given equal consideration for the use, introduction, and education about this great State of Wisconsin. The reality of the matter is that they could disenfranchise from the rest of the State and it is not a healthy environment, a healthy situation for Natural Resources for the long term. Mr. Willett stated that this program is one of his favorites and it is one that needs to be continued to be expanded. Mr. Behnke stated that Mr. Willett's comments are very appropriate. He stated that the Committee indicated that, however, sometime in the past the Board approved this to be set up as a project because they consider it to be a very important area of education for those who need that type of exposure. He was glad to hear this repeated. Mr. Poulson asked if they need to deal with the County Executive or the Mayor regarding this issue. Mr. Tiefenthaler responded the County Executive. Chairman Solberg responded that there was no question that the State should have the urban skills program for some of these children and this is another outreach and a step that he thinks that the Board and Department should take to the County Board. These programs are vitally important to the outreach, bringing these children up learning about the State of Wisconsin.

3.B.12. Statewide Wildlife Habitat Areas land donation - Trempealeau County.

The Committee recommended and Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the donation of 21.5 acres from Trempealeau County for the Statewide Wildlife Habitat Areas in Trempealeau County, as presented. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

4. Committee of the Whole.4.A. Citizen Participation.

This item was taken up during the Committee of the Whole.

4.B. Retirement Resolutions.

- 4.B.1. T. J. Edwards.
- 4.B.2. Lee Haass.
- 4.B.3. David Hanson.
- 4.B.4. Robert Hess.
- 4.B.5. Lon LaBumbard.
- 4.B.6. Mitchell Zmuda.

This item was taken up during the Committee of the Whole.

Mr. Poulson MOVED, seconded by Mr. Behnke, approval of the retirement resolutions, as presented. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

- 4.C. Adoption of Order FH-46-02 - revision of Chapter NR 25, Wis. Adm. Code, pertaining to commercial fishing outlying waters.

This item was taken up during the Committee of the Whole.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, adoption Order FH-46-02 - revision of Chapter NR 25, Wis. Adm. Code, pertaining to commercial fishing outlying waters, as amended to defer Section 4. The order was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

5. Board Members' Matters.

This item was taken up during the Committee of the Whole.

6. Special Committees' Reports

This item was taken up during the Committee of the Whole.

7. Department Secretary's Matters.

- 7.A. Presentation of a Resolution of Commendation for Jay Reed.

Secretary Hassett read the Resolution of Commendation for Mr. Jay Reed, Milwaukee-Journal Sentinel Reporter.

Mr. Behnke MOVED, seconded by Mr. Poulson, approval of the Resolution of Commendation for Jay Reed. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

Mr. Behnke stated there will be a monument placed at the Tiffany Wildlife Area in Mr. Reed's memory. He read the inscription of the monument. Mr. Behnke asked for adequate notice for the dedication ceremony of the Jay Reed Memorial.

- 7.B. DONATION - from Wisconsin Bear Hunters Association for a gift of \$8,500 for the Conservation Warden Internship Program at the University of Wisconsin Stevens Point.

Secretary Hassett presented the Acknowledgment of Gift to the Wisconsin Bear Hunters Association.

Mr. Presig, President, and Mr. Hubert Mulsin, Vice President, of the Wisconsin Bear Hunters Association accepted the acknowledgment and plaque.

Victor Phillips, Dean, College of Natural Resources, University of Wisconsin Stevens Point, thanked the Wisconsin Bear Hunters Association for this gift. He recognized Mr. Robert Holsman for his dedication to the Association.

Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, acceptance of the donation. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

- 7.C. DONATION - from Discover Wisconsin Productions, Milwaukee, for a gift of \$40,000 for video production services.

Mr. Poulson MOVED, seconded by Mr. Willett, acceptance of the donation. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

- 7.D. Request from the Wisconsin Senate Environment and Natural Resources Committee for Modification to Order AM-20-02 - revision of Chapter NR 447, Wis. Adm. Code, pertaining to creating an asbestos citation system. (Adopted by NRB on January 22, 2003, Item 3.A.2., minutes of January 22, 2003).

Secretary Hassett referred to written explanation of the modification/clarification of the rule that was presented to the Board Members earlier.

Pat Kirsop, Small Business Section Chief, was called upon by Secretary Hassett to address any concerns of the Board. Mr. Kirsop stated that what the Department did was clarify the intent of the original rule, the Department put in specific language to limit things within the specific rule.

Citizen Participation on this item included:

- 1) **Bill Scott**, Milwaukee, representing the Center for Equitably Environmental Regulation, was scheduled to speak in opposition to this modification, however, but was not present.
- 2) **Steve Cagle**, Milwaukee, representing laborers. Mr. Cagle spoke in support of the rule to protect the laborers on the front lines dealing with removal of asbestos. He reflected on the risks with those working with asbestos. He spoke of the safety and health standards. He encouraged a level playing field for all contractors and urged the Board to pass this modification regulation.

Mr. Willett MOVED, seconded by Mr. Tiefenthaler, request from the Wisconsin Senate Environment and Natural Resources Committee for Modification to Order AM-20-02 - revision of Chapter NR 447, Wis. Adm. Code, pertaining to creating an asbestos citation system. (Adopted by NRB on January 22, 2003, Item 3.A.2., minutes of January 22, 2003), as presented contingent upon the signature of the Attorney General. The order was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

- 7.E. DONATION - from David Leanna, Do-All Trap Company, Neenah, Wisconsin, for a gift of 600 Do-All trap throwers, for training in shotgun shooting events in the Hunter Education Program

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, acceptance of the donation. The motion was carried unanimously by those members present. (Mr. Ela and Mr. O'Brien were absent)

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The Meeting Adjourned at 1:50 p.m.